Supreme Court, U.S.
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No. 92-1871

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

COMMONWEALTH LAND TITLE INSURANCE COMPANY,
Petitioner,

v.

CORMAN CONSTRUCTION, INC., SIGAL CONSTRUCTION CORPORATION and DEWBERRY & DAVIS/THE JOSEPH BOGGS STUDIO,
Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court of Virginia

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SUPPLEMENTAL BRIEF OF COMMONWEALTH LAND TITLE INSURANCE COMPANY IN SUPPORT OF ITS PETITION FOR A WRIT OF CERTIORARI

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Pursuant to Supreme Court Rule 15.7, Commonwealth Land Title Insurance Company ("Commonwealth") submits this Supplemental Brief in Support of its Petition for a Writ of Certiorari.

1.

On May 24, 1993, Commonwealth filed its Motion to Intervene and Petition for a Writ of Certiorari for

review by the Court of a decision of the Supreme Court of Virginia that upheld the constitutionality of Virginia's mechanic's lien statute. Commonwealth's Motion to Intervene was granted on June 7, 1993.

On August 13, 1993, a Petition for a Writ of Certiorari was filed by American Security Bank and its co-petitioners in *American Security Bank, N.A., et al. v. Dempsey Supply Corporation*, No. 93-236. That petition seeks the Court's review of another decision of the Supreme Court of Virginia upholding the same mechanic's lien statute. The Court has not yet ruled on either petition.

The questions presented in the two cases are identical. Commonwealth respectfully suggests that the Court may wish to consider the Petition in this case and in No. 93-236 at the same time.

2.

On July, 29, 1993, the United States District Court for the Western District of Virginia upheld the validity of Virginia's prejudgment attachment statute using the three-part test articulated in *Connecticut v. Doehr*, 111 S. Ct. 2105 (1991). *Keystone Builders Inc. v. Floor Fashions of Va., Inc.*, No. CIV A 93-0001-C, 1993 WL 311451 (W.D. Va. July 29, 1993). Specifically, the court found the prejudgment attachment statute constitutional because it provides that the party seeking attachment must post a bond and give prompt notice to the defendant. In addition, the statute requires that a judicial proceeding take place before the attachment actually occurs. *Id.* at *3-5.

By implication, this holding conflicts with the decision of the Virginia Supreme Court at issue here,

which upheld the state's mechanic's lien statute. That statute contains none of the procedural safeguards that the court in *Keystone* relied upon, although, in their effect on an owner's ability to convey marketable title, there is no substantial difference between a prejudgment attachment and a mechanic's lien.

Respectfully submitted,

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